

motor vehicle manufacturers' association

160 bloor street east, toronto 5, canada • telephone 924-8108

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The Honourable Mr. Justice George A. McGillivray,
The Royal Commission on the Workmen's Compensation Act,
Box 202, Parliament Buildings,
TORONTO 2, Ontario.

Dear Sir:

The motor vehicle manufacturers in the province of Ontario are pleased to have the opportunity to bring to your attention certain matters of concern to our industry with respect to the subject of the Workmen's Compensation Act of Ontario.

The Motor Vehicle Manufacturers' Association members are the manufacturers in Canada of automobiles and trucks. These manufacturers constitute one of the major industries in Canada. The Association's members employ almost 50,000 persons in Ontario. An indication of its size and impact may be illustrated by reference to table 3 on pages 24 and 25 of the Workmen's Compensation Board's Statistical Report for 1964 which shows the amount of payroll covered by assessments issued for that year by employer rate groups. This shows that the automotive sub-group in class 11, namely rate group 306, had an assessable payroll of \$277 million. It is the fourth largest assessable group payroll of all employers in Schedule I. The members of the Association, acting through the Association, have long taken a keen, active interest in workmen's compensation and accident prevention. In 1950 a Workmen's Compensation Committee was formed within the Association and this was followed in 1952 by the formation of its Industrial Safety Directors Committee. Since their formation these committees have regularly held several meetings each year and have also attended meetings each year with officials of the Workmen's Compensation Board. The Committee members are generally familiar with the Workmen's Compensation Act, the Workmen's Compensation Board's administration of the Act and the cost of benefit awards and of assessment levies on its members. This Association and its members are especially interested in making a submission at this time in view of recent trends in benefit costs, more recent amendments to the Act and the Board's implementation of these.

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Since the last inquiry into the Workmen's Compensation Act conducted by the Honourable Mr. Justice Roach in 1950 there have been a number of significant changes made in the Act and over the intervening period there have been many changes in the Board's administration of the Act. In practically every instance these have broadened the scope of the Act, improved the benefits under the Act or made it easier for injured employees to qualify for such benefits. Inasmuch as the employers of the workmen pay the entire cost of the benefit payments and of the administration of the Act, increased costs of changes and extension fall directly on such employers. The members of the Association approve the principle of the provision of workmen's compensation benefits to injured employees. They are concerned, however, as a result of sharp increases that have occurred over the last several years in the cost of benefits awarded and allowed and of the Board's more recent interpretation and general administrative practices with respect to claims allowances and benefit awards.

Recent Extension of Benefits

In 1963 and 1964 amendments to the Workmen's Compensation Act were enacted which considerably broadened the basis for entitlement to compensation as provided under the Act, as well as increasing the maximum limits of compensation for lost earnings and the amount of pensions to be provided to certain dependents of an employee who has been killed and who are entitled to benefits. Changes were also enacted amending the definition of a compensable "accident".

This Association was of the opinion that the improvements in the pension benefits for dependents had been needed for some time. It was concerned, however, as to the effects of the changes in basis of entitlement to compensation, with respect to both the practical results of the change and the financial cost. We are referring to the amendments to Section 3, Subsection 1(a) enacted which shortened the "waiting period" stipulated for entitlement to compensation benefits from 5 days to 3 days, with a second amendment in 1964 specifying that the waiting period is to be calculated in "calendar" days not working days. In addition, the Workmen's Compensation Board has placed an interpretation on this section of the Act by which it awards compensation benefit payments when the injured workman is off work for any period in excess of 2 full days. We have not agreed with this interpretation and on March 20, 1963, at the time this amendment was before the legislature, representations were made to the Honourable H. L. Rowntree, Q.C., Minister of Labour, by the Ontario Division of the Canadian Manufacturers' Association requesting that the legislation be drawn so as to make it clear that a waiting period of 3 full days was required. This part of the bill was not

changed. Furthermore, as of April 3, 1963 the Board issued an Advisory Notice to employers as follows:

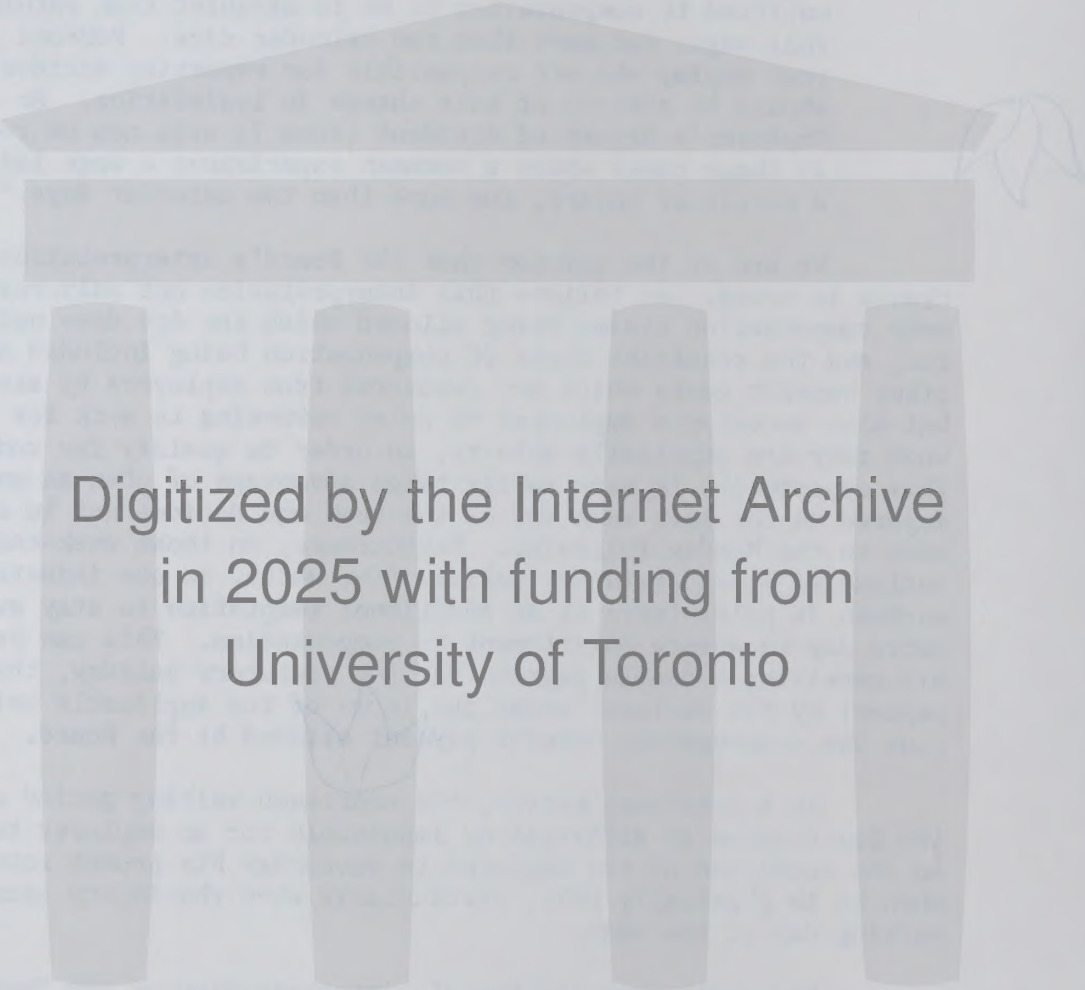
"Any workman injured on or after April 3, 1963 shall be entitled to compensation if he is disabled from earning full wages for more than two calendar days. Persons in your employ who are responsible for reporting accidents should be advised of this change in legislation. An Employer's Report of Accident (form 7) will now be required in those cases where a workman experiences a wage loss, as a result of injury, for more than two calendar days."

We are of the opinion that the Board's interpretation of this clause is wrong. We believe this interpretation not only results in many compensation claims being allowed which the Act does not provide for, and the resultant costs of compensation being included with the other benefit costs which are recovered from employers by assessment, but also encourages employees to delay returning to work for a day when they are physically able to, in order to qualify for compensation. This opportunity is more easily taken advantage of when an employee is injured on the last work day of the week and decides not to return to work on the Monday following. Furthermore, on those week-ends which include an extra statutory holiday (for which, in our industry, the workman is paid) there is an additional temptation to stay away the extra day to assure entitlement to compensation. This can result in his receiving a double payment for the statutory holiday, that is, payment by the employer under the terms of the applicable union contract plus the compensation benefit payment allowed by the Board.

As a practical matter, the shortened waiting period observed by the Board makes it difficult or impossible for an employer to follow up on the condition of the employee to encourage his prompt return to work when he is physically able, particularly when the injury occurs the last working day of the week.

We submit that the Board's interpretation of the "waiting period" as to entitlement to compensation as being any period over 2 calendar days is not consistent with the wording or spirit of the Act and that this interpretation should be changed to conform with the wording of the section.

The amendment to the definition of "accident" enacted in 1963 added "sub-section (iii)" - "disablement arising out of and in the course of employment". It is felt this clause has tended to extend the benefits of the Act to disabilities that arise from the physical condition of the employee more than from an "accident" or "injury" caused by or arising out of his work.



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Accident Costs

It is suggested that the cumulative effect of these extensions of benefit and the changes with respect to the waiting period have been a principal factor in the recent sharp increases in total benefit costs experienced in our rate group. The annual (Financial) Report of the Workmen's Compensation Board for the year 1965 is not yet available. Inasmuch as the financial results of that year are believed to be of particular interest, more fully reflecting the results of changes in the Act during the past 3 or 4 years, it is anticipated that the information that will be contained in such report would be helpful in confirming cost trends, claim allowance practice, etc.

Appendix "A" attached hereto sets out the amount of assessments and of benefit payments and awards over the past 6 years (1960-65) in our rate group 306. Roughly, total accident costs have quadrupled in the period from 1960 to 1965. The greatest increase in cost has occurred in the last two years, 1964 and 1965. During the 6 years the assessable payroll for this rate group has approximately doubled. The assessable payroll of the members of the Motor Vehicle Manufacturers' Association constitutes the major portion of rate group 306. It is evident that, after giving effect to the higher assessable payroll, the accident costs charged to the employers in rate group 306 have approximately doubled in the last 6 years. However, the 1965 accident cost is 145% higher than 1963 whereas the increase in our assessable payroll has been only 37%.

Accident frequency of our member companies over the period 1960-1965 is up. The liberalizing amendments of 1963 and the interpretation by the Board necessarily have resulted in more compensable accidents as allowed by the Board, thus an increase in accident frequency is recorded. It is worth noting that industry-wide accident frequency is down when comparison is made on the A.S.A. basis which is a constant standard. The costs related to such frequency experience would not appear to account for the large part of the increase in accident costs for this period. The additional costs of increased benefits for pensions of dependents would not account for this difference. Increasing costs of medical services and hospital accommodation undoubtedly account for a considerable amount of the increased cost. However, it does seem that a substantial amount of the increase in accident cost is due to the shortening of the compensation waiting period, and the broadening of the basis for entitlement to benefits. This leads us to conclude that certain recent amendments to the Act may have afforded more benefits and a broader basis for accepting claims than it is reasonably equitable at this period to charge solely to employers. As stated above, this may also be partially due to the Board's adoption of a shorter waiting period as a result of interpretation not legislation. Occasional cases are appearing in which compensation is awarded for disabilities that have developed almost wholly due to the physical condition of the employee and not to an accident or his duties at work. In a number of these the disability may develop as a chronic or partially permanent condition and the permanent pension awards made add materially to the cost of compensation.

This leads to another matter, with which we would like to confirm our agreement. In 1950 the Honourable Mr. Justice Roach, Q.C., reported on his investigation into the Workmen's Compensation Act and made recommendations concerning it. He pointed out carefully that the Workmen's Compensation Act originally intended to provide compensation in respect of injuries suffered by workmen in industry. He said it was not a system for providing charity or unemployment insurance nor was it social legislation for the purpose of elevating the standard of one group in society at the expense of another. He did point out that certain amendments enacted prior to his report had the nature of social legislation even though the costs flowing from them were charged to one group of society - namely the employers. He concluded by pointing out that if "social" type amendments continue to be made to the Act, it will distort the purposes of the Act and in addition will place on industry a burden "which should be borne by society generally".

We suggest that some of the amendments enacted in the last three years are in fact social insurance, for example, the amendment to provide compensation for "disablement arising out of and in the course of employment" under the definition of accident (section 1, sub-section 1 of the Act) where this permits entitlement to compensation to an employee whose disablement is wholly or primarily due to his physical condition and not the result of a work injury or accident. To the extent of costs of benefit awards so made, we submit that industry is being unfairly penalized. In addition, where pensions have been retroactively adjusted and charged to the employers being assessed at the time of the adjustment, such steps constitute social legislation and at least a major part of such costs should be borne by all society and not just current employers.

Changes in Legislation

The full costs of compensation benefits, the administration of the Act, rehabilitation and safety education are charged to employers. From time to time over the past 10 years, the government has changed the Workmen's Compensation Act and in most instances the changes have entailed considerable additional costs which are passed on directly to such employers. In nearly all cases, the government has merely announced proposed legislative changes by the bringing down of a bill for first reading and prior to that time it has not afforded an opportunity for employers involved to discuss the effects and the possible results of the changes. In most instances, the legislation has been passed quickly, making it most difficult for the employers involved to properly assess the effects of the proposed legislation and to make representations to the government with respect thereto. We would urge that employers have a reasonable opportunity to consider such proposed amendments and

particularly those that approach the category of social legislation.

Notice of Injury

Section 21 of the Act requires and outlines the basis for an injured workman giving notice of and information concerning the accident in which he was injured to his employer as soon as practicable after the happening of the accident and before the workman has voluntarily left the employment of the work in which he was injured. There is a growing tendency on the part of some workmen to ignore this requirement and it appears that the Board does not notify the workmen of the requirement of the Act. Further, in some quarters workmen are being advised not to go to a medical doctor or first aid attendant maintained by the employer as required under section 15 of the Regulations, but to go to the employee's own doctor in the event of injury. As a result, there are an increasing number of cases in which employees are claiming injury in which the employee has failed or deliberately avoided informing his employer of the nature of the injury and the facts surrounding the accident. Thus, the employer is often not aware of an injury claim until he receives a request from the Workmen's Compensation Board to provide the information normally supplied in form 7, which is the employer's report of the injury and the circumstances surrounding it, etc. Under such circumstances, the employer is then unable to confirm the injury or to effectively investigate the circumstances or even to take steps promptly which might prevent a similar injury occurring again. This practice may also aid unscrupulous persons in making false claims. It is respectfully suggested that consideration should be given to amending the Act to provide that where an employee fails to provide his employer, within a reasonable time, notice of the accident as required under section 21, that he shall not be entitled to compensation for any period prior to the date of the notification. Of course, the Board might be provided with powers to waive this requirement where the circumstances, the place and the time of the injury made it practically impossible for the employee to so inform his employer.

Small Claims

Recently we have observed indications that the administrative department of the Board has appeared to settle small claims without full inquiry. We question the wisdom of settlement which may be based on administrative efficiency rather than on merit. Such practice could eventually lead to frivolous or fraudulent claims. More particularly it could be dangerous because it can establish grounds for re-opening a claim for further benefits in later years.

False Statements

We are aware that the Appeal Tribunal, conducting hearings, receive statements under oath regarding accidents. We are concerned that there is no provision for penalties when false statements are made under oath about an alleged injury. Denial of claim is, of course, no penalty under these circumstances. We suggest that suitable penalties be provided if false statements are given.

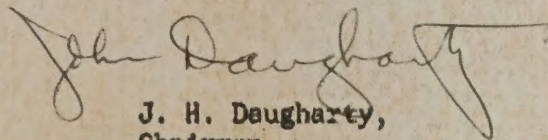
Medically Approved Work

We think it would be wise if the Board would give formal recognition to the principle that medically approved work, within the capabilities of an injured workman, be furthered in the interests of therapy, rehabilitation and reducing the burden of compensation.

Dependents Allowance

In 1963 the pension awards to dependents of workmen who are killed were increased. However, the monthly pensions to widows or invalid husbands of such deceased employees were retained at the figure of \$75 per month. Within the maximum earnings limit stipulated under the Act, the compensation payable to workmen is increased with the increase in actual earnings of such workmen. However, the Act has provided only a stated amount of pension for the dependents of any workman killed. We believe that the \$75 month allowance now provided widows is inadequate in the light of present day conditions and would recommend that these benefits be increased to an appropriate limit.

Yours sincerely,



J. H. Daugherty,
Chairman,
Workmen's Compensation Committee.

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